

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/590,533

Applicant(s)

PURCELL, D.GLENN

Examiner

SARAH A. SIMPSON

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Anh Tuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731

/Sarah A Simpson/
Examiner, Art Unit 3731

Continuation of 11, does NOT place the application in condition for allowance because: The Examiner would like to thank the Applicant for pointing out the typo in the Office Action which addresses the claims to US 5,517,978. The proper reference is in fact Levin et al. (US 4,517,978).

The Applicants arguments have been fully considered but are not persuasive. With respect to independent claims 1 and 7, the Applicant argues that Levin does not disclose a first end of the movable housing adjacent to a first end of the main housing and that instead, the internal abutment is located at the general center of the outer sleeve 47. Further limitations must be included to overcome the prior art of record. The current limitations use vague terms such as "first end". Due to the ambiguity and the variety of different ways the term first end can be interpreted, further clarification in the claims will be necessary.

In this case, the term "first end" is interpreted as not being the most distal point of the movable housing, but rather the portion of the housing that would comprise a first distal portion. The claim does not require that the "first end" be the distal most point of movable housing, only that it be adjacent to a "first end" of the main housing. Please see the attached figure for clarification.

For example, the "first end" of a car would not necessarily be considered just the front bumper of the car, but rather the front portion of the car encompassing the hood area, and perhaps a portion of the passenger area, and the "second end" of the car would not be just the back bumper, but the trunk as well.

Similarly, when interpreting the "first end" of the movable housing as above, the secondary spring is also located adjacent to and between the retainer 43 and the internal surface of the movable housing at the first end of the movable housing when in the puncturing position, as shown in Figure 3. The claim does not require the secondary spring to be adjacent the main housing in the cocked position.

The Applicant also argues that Levin does not disclose decompressing the secondary spring to move the movable housing from the cocking position to the resting position, adjacent the main housing. This requires the movable housing to be adjacent the main housing in the resting position, not the secondary spring. As stated above, this is shown in Figure 2 of Levin. With respect to the decompressing of the secondary spring, it is noted that Figure 3 shows the secondary spring 45 compressed in a puncturing state. To reuse the device, one pulls back on the sleeve 47 to the position shown at 47 A. Abutments 49 continue to keep the spring compressed as they are moved with the spring to a phantom position at 49A pushing against the flange 43 thus pulling back the plunger until it is locked in place by hole 35 (column 3, lines 63-67). The device is now in a cocked position. The sleeve 47 is now free and can be pushed back to the collar 7 (column 3, lines 2-4). As it is pushed back to the resting position shown in Figure 2, the abutments 49 are released from the secondary spring 45, thereby decompressing it.

With respect to claim 8, the Applicant argues that the passage cited in the Office Action has nothing to do with "adjusting the spring ratio" as claimed. However, as described above, when moving from the cocked position to the resting position after the main spring has been compressed as the sleeve is locked in place by the finger 33, the secondary spring moves between a compressed position (as the sleeve 47 is pulled back with the abutments 49 still compressing the spring) to a decompressed position shown in Figure 2, where the sleeve is pushed back down against the collar. Essentially, the main spring remains compressed while, the secondary spring is adjusted from a compressed state to a decompressed state. Thus, the compressed/decompressed spring ratio between the drive spring and the secondary spring adjust. Both springs further change their compressed/decompressed spring ratios when the lancet holder is moved from the cocking position to the puncture position.

With respect to claims 4 and 10, the Applicant argues that Levin indicates that the bounce-back spring 45 is physically attached to the flange 43 because Levin states, "at the rear of the shaft 29 is a collar 41 having a flange 43 which retains a bounce back spring 45". All this proves is that the flange 43 is indeed a retainer, no different from the present applications retainer member 40. If one interprets Levin in this light, then one must also interpret, Figures 4-7 of the present application to indicate the secondary spring 46 is physically attached to the retainer 40. Without this attachment means, the spring would surely float loosely in the housing and be of no use at all.

With respect to claim 6, the Applicant argues that Levin does not teach or disclose "wherein the secondary spring surrounds the entirety of the portion of the shaft enclosed within the movable housing." This is true in Figure 2; however, in Figures 3, during the puncturing position, the secondary spring surrounds the entirety of the portion of the shaft enclosed within the movable housing, as the rest of the shaft is within the main housing. Therefore, in at least some point during operation of the device the limitation is met.